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National Association of Regulatory Utility Commissioners

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

October 29, 2001

Via "Hand Delivery"

Magalie R. Salas  
Secretary  
Federal Communications Commission  
Capitol Heights Facility  
9300 East Hampton Drive  
Capitol Heights, MD 20743.

96-611

*RE: Joint Petition For Rulemaking*

Dear Secretary Salas,

Enclosed please find an original and 15 copies of "JOINT PETITION SEEKING EXPEDITED RULEMAKING TO ESTABLISH MINIMUM NOTICE REQUIREMENTS FOR RECENTLY DETARIFFED SERVICES." Please file stamp one copy to be returned to NARUC.

If you have any questions about this or any other NARUC filing, please do not hesitate to contact me at 202.898.2207 or [jramsay@naruc.org](mailto:jramsay@naruc.org). Thanks.

Sincerely,

James Bradford Ramsay  
NARUC General Counsel

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01-372

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C.

**RECEIVED**

OCT 29 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

*In the Matter*

*Joint Petition for Expedited Rulemaking  
Establishing Minimum Notice Requirements  
For Detariffed Services*

*Policy and Rules Concerning the Interstate,  
Interexchange Marketplace, Implementation  
of Section 254(g) of the Communications Act of 1934,  
as amended*

CC Docket No. 96-61

**JOINT PETITION SEEKING EXPEDITED RULEMAKING TO ESTABLISH MINIMUM  
NOTICE REQUIREMENTS FOR RECENTLY DETARIFFED SERVICES**

Pursuant to Sections 1.49, 1.52, 1.401, and 1.421 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. §§ 1.49, 1.52, 1.401, and 1.421 (2000), Petitioners AARP, Consumer Action ("CA"), Consumer Federation of America ("CFA"), Consumers Union ("CU"), the Massachusetts Union On Public Housing Tenants ("MUPHT"), the National Association of Regulatory Commissioners ("NARUC"), the National Association of Consumer Agency Administrators ("NACAA"), the National Association of State Utility Consumer Advocates ("NASUCA"), and the National Consumers League ("NCL") join to respectfully submit this request for an expedited proposed rulemaking (or further proposed rulemaking) to impose a minimum 30 day notice requirement on recently detariffed domestic toll services.

In support of this request, Petitioners state as follows:

## I. PETITIONERS' INTEREST

AARP,<sup>1</sup> CA, CU,<sup>2</sup> CFA,<sup>3</sup> MUPHT, NASUCA,<sup>4</sup> NARUC,<sup>5</sup> NACAA, and the NCL<sup>6</sup> have joined in this petition. It is significant that these diverse groups with differing perspectives and duties with respect to the public interest implications of the FCC's rules have chosen to make this joint request. NARUC is joining this request, because, in the absence of the proposed rule change to the FCC's recent "detariffing" rules, there is an obvious potential impact on state commission resources, as the new rules will likely ultimately result in an increase in the number of complaints to be handled by state offices. It is also consistent with NARUC's charge to act to promote the public interest. Indeed, last February, in a resolution citing the FCC's detariffing rulemaking, NARUC, *inter alia*, specifically adopted as a "rational and systematic approach to achieving a reasonable level of customer protection," the following principle:

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<sup>1</sup> AARP is a non-profit, nonpartisan membership organization for people 50 and over. We provide information and resources; advocate on legislative, consumer and legal issues; assist members to serve their communities; and offer a wide range of unique benefits, special products, and services for our members. These benefits include AARP Webplace at [www.aarp.org](http://www.aarp.org), Modern Maturity and My Generation magazines, and the monthly AARP Bulletin. Active in every U.S. state and territory, AARP celebrates the attitude that age just isn't a number - it's about how you live your life.

<sup>2</sup> Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* (with approximately 4.5 million paid circulation) regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions, which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

<sup>3</sup> The *Consumer Federation of America* is a non-profit association organized in 1967 to advance the interests of consumers through advocacy and education. CFA's current membership is comprised of over 280 national, state, and local consumer groups throughout the United States, which, in turn represent more than 50 million consumers.

<sup>4</sup> NASUCA is a national organization of 42 offices of utility ratepayer advocates in 40 states and the District of Columbia. These advocates represent millions of American consumers served by investor-owned gas, telephone, electric, and water companies.

<sup>5</sup> NARUC is a quasi-governmental nonprofit organization founded in 1889. NARUC is composed of, *inter alia*, state and territorial officials from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with the duty of regulating the telecommunications common carriers within their respective borders. These officials have the obligation to assure that such telecommunications services and facilities as are required by the public convenience and necessity are established, and that services are furnished at rates that are just and reasonable.

<sup>6</sup> The *National Consumers League* is a private, nonprofit advocacy organization founded in 1899 to advance the economic and social interests of consumers and workers.

“Providing the customer 30 to 60 days notice in advance of any material change to the customer’s existing terms of service document.” A copy of the NARUC resolution is appended to this petition. AARP, CA, CU, CFA, MUPHT, NACAA, NASUCA, and NCL have joined the petition because they share the concerns that the current rules are not adequate to assure that consumers can make informed choices among competing suppliers of toll services.

## II. BACKGROUND

In its Second Report and Order,<sup>7</sup> adopted October 29, 1996, the FCC decided to forbear from tariff filing requirements for non-dominant interexchange carriers. The FCC stated it was replacing regulatory requirements with market forces. The FCC also emphasized that the decision to “detariff” did not signify a departure from its historic commitment to protect consumers against anticompetitive practices. After detariffing, the FCC theorized customers would be able to take advantage of remedies under state consumer protection laws and contract law against abusive practices. Throughout the Second Report and Order and ensuing orders, the FCC repeatedly concluded, “that market forces, our administration of the Section 208 complaint process and our ability to reimpose tariff filing requirements if necessary are sufficient to protect customers.”<sup>8</sup>

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<sup>7</sup> *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730; 4 Comm. Reg. (P & F) 1199 (October 29, 1996) (FCC 96-424).

<sup>8</sup> See, e.g., 11 FCC Rcd at 20733, ¶ 5, which states: “Our decision to forbear from applying the statutory requirement that compels nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services and to implement a policy of complete detariffing does not signify in any way a departure from our historic commitment to protecting consumers of interstate telecommunications services against anticompetitive practices. We reaffirm our pledge to use our complaint process to enforce vigorously our statutory and regulatory safeguards against carriers that attempt to take unfair advantage of American consumers. Moreover, when interstate, domestic, interexchange services are completely detariffed, consumers will be able to take advantage of remedies provided by state consumer protection laws and contract law against abusive practices.”

### III. NEED FOR RELIEF

The July 31, 2001 implementation date has now occurred and the transition from a tariff system to a contract system is in process. The agreements containing terms and conditions under which service will be provided have been made available to customers. Petitioners have evaluated the terms and conditions of the country's four major interexchange carriers, Sprint, MCI, Qwest, and AT&T, for compliance with the expectations outlined by the FCC in its detariffing orders. The protections to customers in a competitive environment after detariffing have not materialized but have been circumvented through these "agreements."

Significantly, all agreements reserve the unilateral right to the carrier to change its rate schedules or terms and conditions at any time. Use of or payment for the service constitutes acceptance and consent to the agreement. If the customer does not accept the agreement in toto the sole remedy is to seek another carrier. While it is our belief that the terms and conditions offered to customers on this "take it or leave it" basis fail to protect customers in several significant areas, this petition addresses only the failure of the agreements to assure that customers will receive advance written notice of significant changes of terms and conditions, including rates, such that customers can make *informed* decisions in the marketplace.<sup>9</sup> Review of the FCC orders on detariffing show that it believed at the time of its decision that consumers would be protected by the full range of state laws, including those governing contracts, consumer protection and deceptive practices. It is also clear that it believed that advance written notice of significant changes in the contract would be available to customers after detariffing. Specifically, the Second Report and Order states "carriers likely will be obligated to notify of any changes in their rates, terms, and conditions for service as part of their contract

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<sup>9</sup> MCI's agreement does provide that any changes in its dial 1 rates will be effective only after 15 days notice by postcard, letter, message on the invoice, telephone call (including a message left on an answering machine), or e-mail (with customer consent).

relationship."<sup>10</sup> Further the FCC stated, "we believe nondominant carriers will likely provide rate and information currently contained in tariffs to their customers in order to establish a relationship or as part of the billing process". *Id.* at ¶ 39. "Detariffing will likely provide greater protection to customers because ... carriers will likely be required as a matter of contract law, to give customers advance notice instituting changes that adversely affect customers." *Id.* at ¶ 41. The FCC stated its expectation that "[I]nterexchange carriers are likely to make rate and service information currently contained in tariffs, available in a more user-friendly form in order to preserve their competitive position." *Id.* at ¶ 59. These were the stated expectations of the FCC for notice to customers of changes in rates. It envisioned an improvement for customers over the old tariff system. In fact, it stated, "tariffs impede competition by permitting carriers to invoke the filed rate doctrine and by not requiring carriers to provide rate and service information directly to consumers".<sup>11</sup>

*Although millions of subscribers sign up for calling plans knowing the specific per-minute or monthly rates, under these new agreements these prices can go up at any time without effective advance notice or even highlighting the change on the customer's first bill using the new higher price.*

While each carrier has stated its intent to use a website posting and a recorded announcement of price increase information that customers may access through a toll-free number, such notice is not an adequate protection for consumers nor is it an effective substitute

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<sup>10</sup> See, 11 FCC Rcd 20745 at ¶ 25 citing, in the related footnote 71, comments filed by MCI, Sprint, AT&T, and others and suggesting that it might "also possible that such notification could be required as a matter of state consumer protection law. Cf. *California Detariffing Interim Opinion* at Appendix A, Rule 7 (providing for consumer notification upon written request).

<sup>11</sup> *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 at 6008, ¶ 6 (March 18, 1999) (FCC 99-47).

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for actual advance written notice.<sup>12</sup> Under this approach consumers are required to check for changes prior to each use of the service or be responsible for payment of all charges for services. Such an approach is not workable or realistic. There are few other market-based services or product that Americans use or buy that the price is not readily known at the time of purchase. The nature of the service, coupled with the unilateral right reserved by the carrier to change rates at any time, makes advance written notice a fundamental necessity for consumers.

Some may argue that this new system is no better or worse than the tariff system it replaces. However, the FCC envisioned a better system for consumers and this belief formed the basis for its decision to detariff. In a competitive market system consumers must have adequate information to make informed decisions. Consumers should not be required to shop for basic consumer protections. Speaking at a Federal Communications Bar Association luncheon in Washington D.C. on June 21st of this year, FCC Chairman Michael Powell said the FCC's public interest standard "shouldn't stand for the conviction that markets are consumer-unfriendly and cannot be trusted." As competition develops, the FCC's role in areas such as rate regulation should decrease unless there is a "clear and compelling justification" for intervention, he said. The interexchange carriers' agreements that allow for unilateral changes to rates and terms and conditions without advance written notice constitutes a "clear and compelling justification" for intervention.

#### **IV. REQUESTED RELIEF**

The Petitioners ask that the FCC exercise its authority under the Communications Act to initiate, on an expedited basis, a Notice of Proposed Rulemaking to institute a minimum notice requirement to be imposed on interexchange carriers for changes in rates and significant terms

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<sup>12</sup> The web-posting required by the FCC in its orders is to help consumers compare plans and choose and to monitor markets. It is not a substitute for adequate advance written notice.



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and conditions contained in agreements. Specifically, Petitioners recommend the following language be added to section 42.10 of the FCC's rules:

- (c) A non-dominant IXC shall give written notice to its presubscribed customers via bill insert, postcard, or letter, of any material change to the rates, terms or conditions at least thirty days before such change takes effect.

**Respectfully Submitted,**

BY: \_\_\_\_\_  
**James Bradford Ramsay**

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**October 29, 2001**

## **Appendix – NARUC Resolution on FCC Mandatory Interexchange Carrier Detariffing**

**WHEREAS**, On October 31, 1996, the FCC released the Detariffing Order directing all nondominant IXC's to "cancel their tariffs for interstate, domestic, interexchange services on file with the FCC within nine months of the effective date of the order and not to file any such tariffs thereafter;" and

**WHEREAS**, The D.C. Circuit stayed that order pending judicial review; and

**WHEREAS**, On reconsideration, the FCC modified its decision so as to allow (1) tariffing of dial around 1+ services using the carrier access code, and (2) tariffing of new customer services for a limited period of 45 days, and on further reconsideration, adopted public disclosure requirements regarding the rates, terms, and conditions governing detariffed services; and

**WHEREAS**, After a favorable D.C. Circuit decision, on May 1, 2000, the 1996 Order requiring detariffing for interstate, domestic, interexchange services of nondominant interexchange carriers became effective (In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of 254(g) of the Communications Act of 1934, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996), Order on Reconsideration, 12 FCC 15014 (1997), Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999)); and

**WHEREAS**, On May 9, 2000, the Common Carrier Bureau implemented a nine-month transition period ending January 31, 2001, and, on November 6, 2000 extended the transition period until April 30, 2001, and on February 5, 2001 further extended the transition period until July 31, 2001, for mass market consumer services only IXC's must still complete the process of detariffing domestic contract-type services by January 31, 2001; and

**WHEREAS**, At the end of the transition period, the terms and conditions for all interstate interexchange services will be controlled by applicable State laws rather than federal tariffs, and

**WHEREAS**, IXC's are expected to send letters to residential and business customers outlining contract terms and consumers are likely to be confused by those letters and as a result generate a high volume of calls to State commissions; and

**WHEREAS**, Consumers should have the right to receive basic information from their selected IXC, in writing, regarding their terms and conditions of service and such contracts or terms of service documents should not require the customer to waive the customer's rights under federal or State law or rules as a condition of receiving service; and

**WHEREAS**, Consumers should have a right to receive the following information regarding their terms and conditions of service:

1. All rates and charges as they will appear on the telephone bill, including any minimum charges or recurring charges;
2. An itemization of any charges which may be imposed on the customer, including but not limited to, charges for late payments and returned checks;
3. A full description of each product or service to which the customer has subscribed;
4. Any applicable minimum contract service terms and any fees for early termination;
5. Any and all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether or not the money is refundable;
6. Any necessary change in the applicant's telephone number;

7. The company's contract cancellation policy;
8. Instructions on canceling service for customers that have not signed a written contract for service;
9. A working toll-free number for customer inquiries; and
10. The provider's legal or "doing business as" name used for providing telecommunications services in the customer's State; and

**WHEREAS,** Such disclosures should allow for easy comparison of services and review of bills generated by acceptance of a specific offer and should be:

1. Sent to new customers before payment for a full bill is due;
2. Sent to existing customers by July 31, 2001;
3. Clearly labeled to indicate it contains the terms and conditions of service;
4. Provided in a readable format written in plain, non-technical language;
5. Provided in the same languages in which the IXC markets service to a customer; and

**WHEREAS,** Subsequent changes by an IXC to a customer-accepted terms of service document should:

1. Be provided to the customer 30 to 60 days in advance of any material change to the customer's existing terms of service document; and
2. Allow the customer the option to declining any material change and cancel service without penalty due to the material change in the customer's terms of service, *now therefore be it,*

**RESOLVED,** That the Board of Directors of National Association of Regulatory Utility Commissioners ("NARUC") convened in its February 2001 Winter Meetings in Washington, D.C., adopts the principles expressed above as a rational and systematic approach to achieving a reasonable level of customer protection; *and be it further*

**RESOLVED,** That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC) convened in its 2001 Winter Committee Meetings in Washington D.C. encourages States to consider these principles and adopt rules as necessary to ensure these customer protections exist within each State, *and be it further*

**RESOLVED,** That the Committee on Consumer Affairs and the Staff Subcommittee on Consumer Affairs shall develop an informational template for State Commissions to use when responding to customer inquiries on this issue.

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Sponsored by the Committee on Consumer Affairs  
Adopted by the NARUC Board of Directors, February 28, 2001.